

## **MDM Declaration Exhibit A-09**

1  
2       UNITED STATES DISTRICT COURT  
3       EASTERN DISTRICT OF NEW YORK  
4       No. 18 Civ. 2949(ARR)(RER)

5  
6       SUSANNA MIRKIN and BORIS MIRKIN,  
7       Individually and on Behalf of All Others  
8       Similarly Situated,

9  
10      Plaintiffs,

11      -against-

12      XOOM ENERGY, LLC AND XOOM ENERGY  
13      NEW YORK, LLC,

14      Defendants.

15  
16      16 Court Street  
17      Brooklyn, New York 11241

18      August 30, 2022

19      10:21 a.m.

20      DEPOSITION of SUSANNA MIRKIN (REDACTED),  
21      a Plaintiff in the above-entitled action,  
22      held at the above time and place, taken  
23      before SAMUEL HITTIN, a Shorthand Reporter  
24      and Notary Public of the State of New  
25      York, pursuant to the Federal Rules of  
      Civil Procedure, order and stipulations  
      between Counsel.

1  
2 APPEARANCES:  
3  
4 WITTELS, McINTURFF, PALIKOVIC  
5 Attorneys for Plaintiffs  
6 SUSANNA MIRKIN and BORIS MIRKIN  
7 295 Madison Avenue  
8 New York, New York 10017  
9 (914)775-8862  
10 BY: STEVEN WITTELS, ESQ.  
11 AND: STEVEN COHEN, ESQ.  
12  
13  
14 MCDOWELL HETHERINGTON, LLP  
15 Attorneys for Defendants  
16 XOOM ENERGY, LLC AND XOOM ENERGY  
17 NEW YORK, LLC  
18 1001 Fannin Street, Suite 2700  
19 Houston, Texas 77002  
20 (713)337-5580  
21 BY: MATT MATTHEWS, ESQ.  
22  
23  
24  
25  
\* \* \*

Page 2

1  
2 controlled thereby.  
3 The filing of the original of this  
4 deposition is waived.  
5 IT IS FURTHER STIPULATED, a copy of  
6 this examination shall be furnished to the  
7 attorney for the witness being examined  
8 without charge.  
9  
10 \* \* \*  
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Page 4

1  
2 STIPULATIONS  
3 IT IS HEREBY STIPULATED, by and among  
4 the attorneys for the respective parties  
5 hereto, that:  
6 All rights provided by the C.P.L.R.,  
7 and Part 221 of the Uniform Rules for the  
8 Conduct of Depositions, including the  
9 right to object to any question, except as  
10 to form, or to move to strike any  
11 testimony at this examination is reserved;  
12 and in addition, the failure to object to  
13 any question or to move to strike any  
14 testimony at this examination shall not be  
15 a bar or waiver to make such motion at,  
16 and is reserved to, the trial of this  
17 action.  
18 This deposition may be sworn to by the  
19 witness being examined before a Notary  
20 Public other than the Notary Public before  
21 whom this examination was begun, but the  
22 failure to do so or to return the original  
23 of this deposition to counsel, shall not  
24 be deemed a waiver of the rights provided  
25 by Rule 3116, C.P.L.R., and shall be

Page 3

1  
2 THE VIDEOGRAPHER: Good morning.  
3 We are going on the record at  
4 10:22 a.m. Eastern Daylight Time on  
5 August 30, 2022. Please note that the  
6 microphones are sensitive and may pick  
7 up whispering and private  
8 conversations. Please mute your  
9 phones at this time. Audio and video  
10 recording will continue to take place  
11 unless all parties agree to go off the  
12 record.

13 This is media unit one of the  
14 video-recorded deposition of Susanna  
15 Mirkin, taken by counsel in the matter  
16 of Susanna Mirkin and Boris Mirkin,  
17 et al., versus XOOM Energy, LLC, and  
18 XOOM Energy New York, LLC, filed in  
19 the United States District Court,  
20 Eastern Division of New York, Case  
21 Number 18-CIV-2949.

22 The location of this deposition  
23 is Veritext Brooklyn, 16 Court Street,  
24 Brooklyn, New York.

25 My name is Zef Cota,

Page 5

2 (Pages 2 - 5)

1 S. MIRKIN  
2 Q. Okay. So you come to the United  
3 States when you were about 12 years old,  
4 right?  
5 A. 9.  
6 Q. Oh. Okay. And did you move to  
7 New York right away?  
8 A. Yes.  
9 Q. And have been here ever since?  
10 A. Yes.  
11 Q. And you live in Brooklyn  
12 currently?  
13 A. I do.  
14 Q. Have you always lived in  
15 Brooklyn?  
16 A. I lived in Queens.  
17 Q. When did you live in Queens?  
18 A. I don't have exact dates, the  
19 years.  
20 Q. That's okay. What's the  
21 ballpark?  
22 A. In 2000s.  
23 Q. Okay. Do you remember the  
24 address?  
25 A. No, not exactly.

Page 32

1 S. MIRKIN  
2 A. No.  
3 Q. Have you and Mr. Mirkin ever  
4 owned any other properties?  
5 A. No.  
6 Q. Do you remember the address you  
7 lived at before moving to 1677 East 34th?  
8 A. I lived in Queens.  
9 Q. I see.  
10 Okay. Ms. Mirkin, you've never  
11 live in Staten Island, right?  
12 A. No.  
13 Q. Okay. And do you understand  
14 that there has been some documents  
15 produced in this case that show a Boris  
16 Mirkin receiving gas service from XOOM  
17 Energy?  
18 A. I saw that, yes.  
19 Q. Okay. But that is not your  
20 husband?  
21 A. That is not my husband.  
22 Q. That's a different Boris Mirkin?  
23 A. Correct.  
24 Q. Is that Boris Mirkin related to  
25 your husband?

Page 34

1 S. MIRKIN  
2 Q. Okay. Aside from the period of  
3 time that you've lived in Queens, you've  
4 always lived in Brooklyn --  
5 A. Mm-hmm. Yes.  
6 Q. -- ever since 1990?  
7 And your current address is  
8 what?  
9 A. 1677 East 34th Street, Brooklyn,  
10 New York 11234.  
11 Q. And do you own or rent that  
12 property?  
13 A. We own.  
14 Q. You and --  
15 A. My husband.  
16 Q. -- Boris Mirkin own it jointly?  
17 A. Yes.  
18 Q. And who lives there with you?  
19 A. Us and our kids.  
20 Q. How long have you lived at that  
21 address?  
22 A. 12 years.  
23 Q. Have you owned or rented any  
24 other properties during that 12-year  
25 period?

Page 33

1 S. MIRKIN  
2 A. I think he's a cousin.  
3 Q. Okay.  
4 A. My husband would know more about  
5 this Boris Mirkin.  
6 Q. Yes. But just to show you --  
7 MR. MATTHEWS: Can I have the  
8 stickers. Thank you.  
9 Q. Ms. Mirkin, I'm going to mark  
10 this document, which is an e-mail. The  
11 heading says New Customer Enrollment, just  
12 so we're -- we know we're talking about  
13 the same thing.  
14 A. Sure.  
15 Q. I'm going to hand you that.  
16 A. Mm-hmm.  
17 [Whereupon, document was marked  
18 as Defendants' Exhibit 4 for  
19 identification, as of this date.]  
20 Q. This is a document that's been  
21 Bates-labeled XOOM INIT 12 through 13.  
22 Have you seen this document  
23 before?  
24 A. No.  
25 Q. No. Fair enough.

Page 35

8 (Pages 32 - 35)

1 S. MIRKIN  
2 The billing info there, you  
3 see it shows Boris Mirkin, 21 Peggy Lane,  
4 Staten Island, New York 10306? Do you see  
5 that?  
6 A. I see that.  
7 Q. And that's not your husband?  
8 A. That's not my husband.  
9 Q. And the phone number is not --  
10 A. That's --  
11 Q. -- your husband's phone number,  
12 and you've never seen that e-mail address  
13 either?  
14 A. No.  
15 Q. Okay. So this account that is  
16 referred to in Exhibit 4 is not an account  
17 that ever belonged to or was used by you  
18 or your husband?  
19 A. Correct.  
20 Q. And to the best of your  
21 knowledge, you've never had natural gas  
22 service with XOOM Energy, correct?  
23 A. Yes. Correct.  
24 Q. And neither has your husband, to  
25 the best of your knowledge?

Page 36

1 S. MIRKIN  
2 best rates out there, and he just says,  
3 you know, This is the best. I say, Okay,  
4 do whatever you want.  
5 Q. Do you know where he looks?  
6 A. Online. I mean, that's the best  
7 option out there.  
8 Q. Yeah. Nothing -- I don't mean  
9 to suggest there's anything wrong with  
10 that.  
11 A. Right.  
12 Q. I'm just -- I don't -- I'm  
13 trying to get a sense of, does he -- does  
14 he call companies, does he go visit with  
15 door-to-door salespeople, or does he --  
16 A. In my knowledge --  
17 Q. -- just do it online?  
18 MR. WITTELS: Object to the  
19 form. Multiple questions. If you  
20 want to break it up.  
21 MR. MATTHEWS: No. That's okay.  
22 MR. WITTELS: You asked two at  
23 the same time.  
24 MR. MATTHEWS: Yeah. That's  
25 okay.

Page 38

1 S. MIRKIN  
2 A. I'm not sure. He takes care of  
3 all the bills, so I'm not sure.  
4 Q. Okay. Okay. And you personally  
5 don't know anything about the natural gas  
6 rates that XOOM charged in New York since  
7 it entered the market here, correct?  
8 A. The gas?  
9 Q. Yes, ma'am.  
10 A. No.  
11 Q. You said that your husband is  
12 the one who takes care of the bills. Is  
13 he generally -- is it fair to say he's the  
14 one who is generally in charge of energy  
15 decisions in the house?  
16 A. Correct.  
17 Q. Does he consult with you about  
18 retail energy decisions?  
19 A. Sure, we discuss it, but he  
20 takes care of it at the end.  
21 Q. Okay. Just help me understand  
22 in a basic way how it works in your  
23 household with respect to selecting energy  
24 providers for electricity or natural gas.  
25 A. So he basically looks for the

Page 37

1 S. MIRKIN  
2 MR. WITTELS: Object to the  
3 form.  
4 If you understand it, you can  
5 answer.  
6 THE WITNESS: Okay.  
7 A. In my knowledge, he looks  
8 through the internet. That's the best  
9 way.  
10 Q. Okay. So making retail energy  
11 decisions in your house, how it generally  
12 works is, Mr. Mirkin looks online to shop  
13 for the best rates available, he sometimes  
14 speaks with you about it, and then he is  
15 the one who takes care of the actual  
16 enrollment?  
17 A. Correct.  
18 MR. WITTELS: Object.  
19 Give me time to answer --  
20 object. It's fine for you to answer.  
21 Just give me time on the record before  
22 you answer and after he asks his  
23 question, please.  
24 Object to the form of that.  
25 You already answered.

Page 39

9 (Pages 36 - 39)

1 S. MIRKIN  
2 when I first heard about it.  
3 Q. Why did he enroll under your  
4 name?  
5 A. To have something under my name,  
6 to have residential proof.  
7 Q. Residential proof for you?  
8 A. Yes.  
9 Q. Did you need that for  
10 employment?  
11 A. For employment.  
12 Q. I see.  
13 At the time, did you understand  
14 that the rate that you were enrolling with  
15 XOOM was a rate that could vary from month  
16 to month?  
17 A. My husband probably did, but it  
18 wasn't in my understanding. When we  
19 applied, he told me it was the lowest  
20 rate, and I agreed, so he took care of the  
21 rest.  
22 Q. You didn't have an understanding  
23 as to whether the rate was fixed or  
24 variable at the time?  
25 A. No.

Page 60

1 S. MIRKIN  
2 from month to month according to the terms  
3 of the contract?  
4 A. Correct.  
5 Q. Okay. Looking back at that  
6 phrase "actual and estimated supply  
7 costs" -- do you see that on Exhibit 3?  
8 A. Yes.  
9 Q. What does that mean to you, that  
10 the rate will be based on XOOM's actual  
11 and estimated supply costs?  
12 A. I'm not sure. It's for lawyers  
13 to figure it out.  
14 Q. Okay. You don't have any  
15 personal understanding --  
16 A. No.  
17 Q. -- of what that means?  
18 A. No.  
19 Q. Okay. And you don't have any  
20 personal understanding about what XOOM's  
21 actual and estimated supply costs were?  
22 MR. WITTELS: Asked and  
23 answered. Objection.  
24 You can answer again.  
25 A. Can you repeat that?

Page 62

1 S. MIRKIN  
2 Q. Okay. You're not claiming in  
3 this -- I understand that you take issue  
4 with the rates that XOOM charged, with how  
5 high they were --  
6 A. Mm-hmm.  
7 Q. -- right?  
8 A. Correct.  
9 Q. But you are not alleging that  
10 XOOM had no right to charge you a variable  
11 rate, right?  
12 MR. WITTELS: Objection to form.  
13 You can answer.  
14 A. Can you repeat that?  
15 Q. Sure.  
16 What I'm getting at is, you --  
17 you don't dispute that you and your  
18 husband enrolled in a variable rate plan  
19 with XOOM?  
20 MR. WITTELS: Objection to form.  
21 You can answer.  
22 A. If I understand that we enrolled  
23 in a variable rate? I do understand that.  
24 Q. Okay. And you understand that  
25 the contract permitted that rate to vary

Page 61

1 S. MIRKIN  
2 Q. You don't have an understanding  
3 as to what XOOM's actual and estimated  
4 supply costs were, correct?  
5 MR. WITTELS: Okay. He's asked  
6 it about three times, but I'm going to  
7 allow you to answer again.  
8 MR. MATTHEWS: You just asked --  
9 you told me to ask it again.  
10 MR. WITTELS: No. I'm saying  
11 you already asked the question, and  
12 it's on the record that she's answered  
13 that question.  
14 But if -- we'll stop it at some  
15 point, but you can answer again --  
16 THE WITNESS: Mm-hmm.  
17 MR. WITTELS: -- if you  
18 understand the question.  
19 A. Can you repeat that?  
20 MR. WITTELS: Let's have the  
21 reporter read it back so he doesn't  
22 have to say it again.  
23 [Whereupon, a portion of the  
24 testimony was read back.]  
25 A. What they were? No. What they

Page 63

15 (Pages 60 - 63)

1 S. MIRKIN  
2 charged us? Yes, I do, according to  
3 Exhibit 2.  
4 Q. Right. Yeah. I'm with you.  
5 All right. You don't contend  
6 that the contract with XOOM promised you  
7 and your husband savings, correct?  
8 MR. WITTELS: Objection.  
9 A. What is "contend".  
10 Q. Your position in this case.  
11 It is not your position in this  
12 lawsuit that that contract promised you  
13 savings as compared to the utility?  
14 MR. WITTELS: Objection.  
15 Go ahead.  
16 A. If they promised us savings? I  
17 mean, according to Exhibit 2, the  
18 difference in percentage, that went from  
19 May to November, is so significant, and  
20 initially, when he signed up, when my  
21 husband and I spoke about it, that was the  
22 lowest rate. So, yes, we are thinking  
23 that it would be saving us.  
24 MR. MATTHEWS: Objection.  
25 Nonresponsive.

Page 64

1 S. MIRKIN  
2 MR. WITTELS: Objection.  
3 Do you understand that?  
4 THE WITNESS: No, I don't  
5 understand that.  
6 Q. It doesn't say that it will  
7 match increases or decreases in the supply  
8 costs exactly, right?  
9 MR. WITTELS: Objection. It  
10 says what it says.  
11 MR. MATTHEWS: Don't coach her.  
12 MR. WITTELS: I mean, you --  
13 MR. MATTHEWS: You can say  
14 objection to form. Look, I've sat  
15 through the longest depositions with  
16 you guys. This is not taking that  
17 long, and it's --  
18 MR. WITTELS: Okay. Objection.  
19 MR. MATTHEWS: Just note your  
20 objection --  
21 MR. WITTELS: I mean, we can --  
22 MR. MATTHEWS: -- and stop  
23 taking.  
24 MR. WITTELS: Objection to form.  
25 You can answer, if you

Page 66

1 S. MIRKIN  
2 Q. I'm asking a different question.  
3 I'm not asking about your understanding or  
4 your belief. I'm just asking about what  
5 the contract says. And you would agree  
6 with me that the contract does not say you  
7 are guaranteed savings as compared to the  
8 utility?  
9 A. It doesn't say in the contract  
10 "savings," no.  
11 Q. Okay. And the contract doesn't  
12 say that the variable rate will be lower  
13 than the utility rate, right?  
14 MR. WITTELS: Objection.  
15 A. No. The contract says the  
16 monthly variable rate will be based on  
17 XOOM's actual and estimated supply costs.  
18 Q. Right. And it doesn't say it  
19 will be equal to those supply costs,  
20 right?  
21 MR. WITTELS: Objection.  
22 A. No.  
23 Q. And it doesn't say that it will  
24 correlate precisely with those supply  
25 costs, right?

Page 65

1 S. MIRKIN  
2 understand.  
3 A. If it matched, no. The contract  
4 does not say that. It says the monthly  
5 variable rate will be based on XOOM's  
6 actual and estimated supply costs.  
7 Q. I agree.  
8 The contract does not say that  
9 XOOM will be the lowest rate in the  
10 market, right?  
11 A. It doesn't.  
12 MR. WITTELS: Objection.  
13 Q. And it doesn't say that XOOM  
14 will limit its margins, right?  
15 MR. WITTELS: Objection.  
16 THE WITNESS: No, it doesn't say  
17 that.  
18 Q. Okay. Would you agree that XOOM  
19 is allowed to seek a profit on the rates  
20 it charges?  
21 A. I mean, any company is allowed  
22 according to the contract, for sure.  
23 Q. Okay. You don't contend that  
24 XOOM is not allowed to make a profit on  
25 its electricity contracts, right?

Page 67

16 (Pages 64 - 67)

1 S. MIRKIN  
2 MR. WITTELS: Objection.  
3 A. If they're not allowed?  
4 Q. It's not your position in the  
5 case that XOOM is -- may not seek a profit  
6 on its energy contracts?  
7 A. It's not my position, no.  
8 Q. Okay. You agree that XOOM can  
9 seek a profit on its contracts?  
10 A. XOOM or any --  
11 MR. WITTELS: Objection.  
12 You can answer.  
13 A. XOOM or any company is allowed  
14 to have a profit according to their  
15 contract.  
16 Q. And what the contract allows is  
17 the only limit on that profit, right?  
18 MR. WITTELS: Objection.  
19 A. The only limit on their profit?  
20 What does that mean?  
21 Q. That the contract doesn't say --  
22 let me ask it differently.  
23 The contract doesn't say that  
24 XOOM will only seek a specific profit  
25 percentage, right?

Page 68

1 S. MIRKIN  
2 okay.  
3 A. Mm-hmm.  
4 Q. But that's my question. Today,  
5 you don't know how XOOM's variable rates  
6 compared to the utilities rates during the  
7 time you were a XOOM customer, right?  
8 MR. WITTELS: Objection.  
9 A. No, I don't.  
10 Q. Okay. You've continued looking  
11 at the table on Exhibit 2, at the rates,  
12 and I'm going to direct you to look at the  
13 table, if you don't mind.  
14 A. Sure.  
15 Q. The first month, where your rate  
16 was 8.99 cents per kilowatt hour -- do you  
17 see that?  
18 A. I see. In May through June?  
19 Q. Yes, ma'am.  
20 You are not arguing that that  
21 rate was too high, right?  
22 A. No.  
23 Q. Okay. That rate, you do not  
24 believe breached your agreement with XOOM,  
25 right?

Page 70

1 S. MIRKIN  
2 A. It does not say that.  
3 Q. Okay. And the energy markets do  
4 not -- in New York, do not cap the profit  
5 that XOOM can seek, right?  
6 MR. WITTELS: Objection.  
7 A. Do I know that?  
8 Q. I'm asking.  
9 A. I don't know that.  
10 Q. Okay. With respect to utility,  
11 do you know how XOOM's rates compared to  
12 utilities rates during the time you were a  
13 XOOM customer?  
14 A. At that time?  
15 Q. Mm-hmm.  
16 A. Probably my husband does. I'm  
17 not sure. I didn't deal with the rates  
18 and everything. My husband did all of it.  
19 Q. I don't mean it as a criticism.  
20 This is my only opportunity to talk to  
21 you, and I'm trying to get your best  
22 testimony about what you know and you  
23 don't know.  
24 A. Mm-hmm.  
25 Q. And if you don't know, that's

Page 69

1 S. MIRKIN  
2 MR. WITTELS: Objection.  
3 A. That rate, in knowledge of my  
4 husband and I, that was a good rate.  
5 Q. And your lawsuit against XOOM is  
6 based on this contract that we looked at,  
7 at Exhibit 3, right?  
8 A. Right.  
9 Q. And just for completeness, I'm  
10 going -- Exhibit 3 is just the first page  
11 of that contract, right? It's not the  
12 full contract?  
13 A. Correct.  
14 Q. Okay. I'm going to mark as  
15 Exhibit 5 a full copy of those terms and  
16 conditions.  
17 [Whereupon, document was marked  
18 as Defendants' Exhibit 5 for  
19 identification, as of this date.]  
20 Q. And please take as much time as  
21 you want to review it and confirm that  
22 what I'm saying is accurate.  
23 A. You want me to read the whole  
24 agreement?  
25 Q. No, no, no. I'm not instructing

Page 71

17 (Pages 68 - 71)

1 S. MIRKIN  
2 you to read it, but I'm telling you that  
3 you are -- what I'm saying is, I don't  
4 want you to feel rushed, and I want you to  
5 take as much time as you want to, to be  
6 comfortable that what I'm telling you is  
7 accurate.

8 So does this document that I've  
9 marked as Exhibit 5 appear to be the same  
10 first page --

11 A. Yeah.

12 Q. I'm sorry.

13 Does Exhibit 5 appear to be the  
14 same as it relates to the first page, as  
15 Exhibit 3?

16 A. Correct.

17 Q. Okay. And your lawsuit is about  
18 this contract?

19 A. Correct.

20 Q. You are not alleging that a XOOM  
21 sales rep lied to you or your husband,  
22 right?

23 MR. WITTELS: Objection.

24 A. I'm not sure what you mean.

25 Sales rep? I don't know if there was a

1 S. MIRKIN  
2 XOOM, in an advertisement or a marketing  
3 letter, lied to you?

4 MR. WITTELS: Objection.

5 A. No.

6 Q. You're not alleging that XOOM  
7 made some sort of oral promise to you?

8 MR. WITTELS: Objection.

9 You can answer.

10 A. No.

11 Q. You are not bringing a claim  
12 against XOOM based on any other written  
13 document, right?

14 A. Just the contract.

15 Q. Okay.

16 MR. WITTELS: Object to the  
17 previous question.

18 Q. Ms. Mirkin, why did you switch  
19 from XOOM to Viridian?

20 A. Probably the rates. My husband  
21 did all of it, so I'm sure that was the  
22 reason.

23 Q. You're guessing about what his  
24 reason was?

25 A. No, I'm not guessing. I'm sure

Page 72

Page 74

1 S. MIRKIN  
2 sales rep. I don't know. My husband did  
3 all of it. So whether he did it online or  
4 in person, I'm not sure. You have to ask  
5 him.

6 Q. I will. But this is my only  
7 chance to talk to you. And I understand  
8 that you are suing my client for an  
9 alleged breach of the contract that I've  
10 marked as Exhibit 5. I understand that.  
11 But what I'm asking is, you are  
12 not alleging in this lawsuit that a sales  
13 representative came to the house and lied  
14 to you or your husband, right?

15 MR. WITTELS: Objection to the  
16 form.

17 A. In my knowledge, no.

18 Q. Okay. And you're not alleging  
19 that someone on a telephone, on behalf of  
20 XOOM, lied to you or your husband about  
21 variable rates, right?

22 MR. WITTELS: Objection.

23 You can answer.

24 A. In my knowledge, no.

25 Q. And you are not alleging that

1 S. MIRKIN  
2 it was the rates.  
3 Q. Okay. What do you remember  
4 about Viridian's rate?

5 A. I don't know any rates about  
6 Viridian.

7 Q. Okay.

8 A. I don't go into details with  
9 bills, everything my husband does with  
10 rates and how much it's going to be.

11 Q. Yeah, it's -- I'm -- I don't  
12 mean it as a criticism. It's okay if you  
13 were not involved in the decision to  
14 switch to Viridian. But we've never met  
15 before today, right?

16 A. Right.

17 Q. And we've never talked about  
18 this lawsuit before today, right?

19 A. Mm-hmm.

20 Q. So I'm just trying to get a  
21 sense of how you personally fit in to this  
22 case and all of the decisions about  
23 energy.

24 A. Mm-hmm.

25 Q. So is it fair to say that you

Page 73

Page 75

18 (Pages 72 - 75)

1  
2 A. No.  
3 Q. Okay. Okay. Thank you very  
4 much.  
5 A. Okay.  
6 THE VIDEOGRAPHER: We are off  
7 the record at 12:08 p.m., and this  
8 concludes today's testimony given by  
9 Susanna Mirkin.  
10  
11 [TIME NOTED: 12:07 p.m.]  
12

13 SUSANNA MIRKIN  
14  
15 SUBSCRIBED AND SWORN TO  
16 BEFORE ME THIS \_\_\_\_\_  
17 DAY OF \_\_\_\_\_, 2022.  
18  
19

20  
21  
22  
23  
24  
25  
17 NOTARY PUBLIC

Page 98

1  
2 CERTIFICATION  
3  
4 I, Samuel Hittin, a Notary Public for  
5 and within the State of New York, do  
6 hereby certify:

7 That the witness whose testimony as  
8 herein set forth, was duly sworn by me;  
9 and that the within transcript is a true  
10 record of the testimony given by said  
11 witness.

12 I further certify that I am not  
13 related to any of the parties to this  
14 action by blood or marriage, and that I am  
15 in no way interested in the outcome of  
16 this matter.

17 IN WITNESS WHEREOF, I have hereunto  
18 set my hand this 6th day of September,  
19 2022.

20

21

  
22 SAMUEL HITTIN

23  
24 \* \* \*  
25

Page 100

1  
2 I N D E X  
3  
4 WITNESS EXAMINATION BY PAGE  
5 SUSANNA MIRKIN MATT MATTHEWS 7, 94  
6 STEVEN WITTELS 92  
7  
8 EXHIBITS  
9 PLAINTIFF'S DESCRIPTION PAGE  
10 EXHIBIT 1 - CON EDISON RECORD 20  
11 EXHIBIT 2 - PAGE 19 OF WITNESS'S 20  
12 COMPLAINT  
13 EXHIBIT 3 - FIRST PAGE OF SOME 20  
14 CONTRACT TERMS AND  
15 CONDITIONS  
16 EXHIBIT 4 - BILLING INFORMATION 35  
17 FOR BORIS MIRKIN,  
18 21 PEGGY LANE, STATEN  
19 ISLAND, NEW YORK 10306  
20 EXHIBIT 5 - FULL COPY OF THOSE 71  
21 TERMS AND CONDITIONS  
22  
23  
24  
25

Page 99

1  
2 ERRATA SHEET  
3 VERITEXT/NEW YORK REPORTING, LLC  
4 CASE NAME: SUSANNA MIRKIN AND BORIS  
5 MIRKIN, ET AL VS. XOOM ENERGY,  
6 LLC, ET AL  
7 DATE OF DEPOSITION: AUGUST 30, 2022  
8 WITNESS' NAME: SUSANNA MIRKIN  
9  
10 PAGE/LINE(S)/ CHANGE REASON  
11 / / /  
12 / / /  
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20 SUSANNA MIRKIN  
21 SUBSCRIBED AND SWORN TO  
22 BEFORE ME THIS \_\_\_\_\_ DAY  
23 OF \_\_\_\_\_, 2022.  
24  
25 NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

Page 101

22 (Pages 98 - 101)

1  
2 MR. MATTHEWS: Subject to  
3 additional questions that were not  
4 permitted today, I will pass the  
5 witness.

6 And I appreciate your time.

7 THE WITNESS: Okay.

8 MR. WITTELS: No questions,  
9 which is very rare for me.

10 MR. MATTHEWS: Okay. Thank you.

11 THE VIDEOGRAPHER: We are off  
12 the record at 2:20 p.m. And this  
13 concludes today's testimony given by  
14 Boris Mirkin.

15  
16 [TIME NOTED: 2:19 p.m.]

17  
Boris Mirkin  
Boris Mirkin (Oct 7, 2022 12:22 EDT)

18 BORIS MIRKIN

19 October 7, 2022

20 SUBSCRIBED AND SWORN TO

BEFORE ME THIS

21 DAY OF , 2022.

22 NOTARY PUBLIC

1  
2                   ERRATA SHEET  
3                   VERITEXT/NEW YORK REPORTING, LLC

4                   CASE NAME: SUSANNA MIRKIN AND BORIS  
5                   MIRKIN, ET AL VS. XOOM ENERGY,  
6                   LLC, ET AL

7                   DATE OF DEPOSITION: AUGUST 30, 2022

8                   WITNESS' NAME: BORIS MIRKIN

9                   PAGE/LINE(S) /        CHANGE                   REASON

10                16 / 6-7 / Q. You work in the/ correcting  
11                / / criminal court?/ the  
12                / / record

13                17 / 22 / "way"                   ->/ -  
14                / / "away"                   correcting  
15                / / the  
16                / / record

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*Boris Mirkin*  
Boris Mirkin (Oct 7, 2022 12:22 EDT)

-----  
20                BORIS MIRKIN

21                SUBSCRIBED AND SWORN TO  
22                BEFORE ME THIS \_\_\_\_\_ DAY  
23                OF \_\_\_\_\_, 2022.

24                -----  
25                NOTARY PUBLIC

MY COMMISSION EXPIRES -----